

Victim's Guide to the Nebraska Criminal Justice System

(Felony Cases)



Information about the Criminal Justice System

Important Contact Information

County Attorney's Name: _____

Prosecutor's Name: _____

Phone Number: _____

Victim Assistance Agency: _____

Contact Name(s): _____

Phone Number: _____

VINE 1-877-634-8463

Inmate Name: _____

Inmate Number: _____

Institution Name: _____

Your four-digit PIN: ____ ____ ____ ____

How Do I Find Help?

To find out where you can get help or information call:

Nebraska Coalition for Victims of Crime 1-800-944-NCVC(6282)

Nebraska Domestic Violence Sexual Assault Coalition 1-800-876-6238

Mothers Against Drunk Driving (MADD) 1-800-444-6233

Your Local Child Advocacy Center (check telephone book)

Contact the Nebraska Crime Commission at (402) 471-2194

Intimidation

If you or your immediate family is subjected to acts or threats of physical violence or intimidation by the defendant or at the direction of the defendant:

- Contact your local law enforcement agency immediately and report the incident.
- Contact the County Attorney's Office and tell the attorney handling the case what has been happening.
- Ask whether you or your family members may qualify for a protection order.
- Contact the nearest victim assistance program and request information on safety planning.

Explanation of the Criminal Justice System

(Felony Cases)

Felony Crime Committed

Law enforcement responds to a call and takes statements from witnesses, including the victim. The victim's immediate needs are tended to. Law enforcement investigates the crime.

Investigation

If law enforcement gathers enough evidence against a person suspected of committing the crime, they may obtain an arrest warrant from the court and make the arrest.

Arrest

If an arrest is made, the facts of the case are presented to the County Attorney (Prosecutor) who determines if criminal charges are to be filed with the court against the suspect(s) (accused). At this point, the authority of the case transfers from the law enforcement agency to the County Attorney's Office.

Felony Case Filed by Prosecution

If the Prosecutor believes there is enough evidence to prove that the accused committed the crime, the Prosecutor decides what charges are to be filed and files the criminal charges with the court.

Initial Arraignment (County Court)

The accused is brought before a County Judge where the County Attorney informs the defendant (accused) of the criminal charges against him or her and the possible penalties for such crimes. A defense attorney is appointed for the defendant if he/she cannot afford one.

- **Possible Plea Negotiations:** In plea-bargaining, the defendant may be offered a reduced (lesser) charge by the Prosecutor for a guilty plea. If the defendant pleads guilty to a lesser charge, the judge decides the penalties for the defendant and no further court action takes place.
- **Bail:** If no plea-bargain is offered or agreed to, a date is set for further court proceedings. The judge may set bail for the accused.

Docket Call (County Court)

Some County Court Judges may use a Docket Call to control his/her schedule. Victims need not appear at a Docket Call. The Prosecutor and the defense attorney appear and the court sets a date for the Preliminary Hearing.

Preliminary Hearing (County Court)

The defendant has the right to waive (not have) the Preliminary Hearing at any point before it is held. At a Preliminary Hearing, the victim and possibly other witnesses may be asked to testify and may be subject to cross-examination by the defense attorney (the defendant's attorney). The defendant will be present at the Preliminary Hearing. During the Preliminary Hearing the following may occur.

- **Dismissal:** If the Judge decides there is not enough evidence to prove that a crime was committed or that the defendant most likely did not commit the crime, the case will be dismissed.
- **Release:** If the case is dismissed, the defendant is released and free to leave.
- **Bound Over to District Court:** If during the Preliminary Hearing, the Judge decides there is sufficient evidence to prove that a crime was committed and that the defendant most likely committed the crime, the case will be transferred to the District Court for trial.

Filing of Information and Arraignment (District Court)

The charges are brought before a District Court Judge. The County Attorney informs the defendant of the charges against him or her and the penalties. A date is set for further proceedings.

- **Plea Negotiations:** Plea-bargaining may take place between the County Attorney, the defendant and his/her attorney. In plea-bargaining, the defendant may be offered a reduced (lesser) charge for a guilty plea. If the defendant pleads guilty, the judge decides the penalties for the defendant and no further court action takes place.

Plea

If there are no plea negotiations, the defendant will go before the court and state a plea of guilty, not guilty or Nolo Contendere (No Contest) of the crime for which they are charged. No Contest is a plea by the defendant

without admitting guilt but subjects him/her to conviction for the crime. The defendant can later deny the charges.

A) Pleads Not Guilty: The defendant is stating that he/she is not guilty of committing the crime(s). The following procedures then occur.

1) Set for Trial: The court schedules the date of the trial. Prior to trial, the defendant may file motions to exclude a person who will testify against him or her or to exclude the victim. The victim's testimony may be needed with such motions. Such motions may also include a request to exclude certain types of physical evidence from being introduced during the trial. The defendant's attorney may also take sworn, written statements from the victim and other witnesses prior to trial. This is called a deposition.

2) Discovery Pre-trial motion: The defendant's attorney is provided the evidence the prosecutor has against the defendant.

3) Trial & Verdict: The defendant and his/her attorney decide if they want a trial by jury or with a Judge. A jury is made up of 12 people randomly selected by the court who hear all the evidence in the case and decide the verdict (guilty or not guilty) of the defendant. If the trial is with a Judge, then the Judge decides the verdict (guilty or not guilty) of the defendant.

4) Not Guilty Verdict: If the defendant is found not guilty, he/she is released and is free.

5) Guilty Verdict: If the defendant is found guilty of the charges there is usually a Pre-sentence investigation completed.

6) Pre-Sentence Investigation: If the defendant is found guilty, a pre-sentence investigation is completed by the Probation Department. It consists of an interview with the defendant, a review of his/her criminal record, and a review of the specific facts of the crime. A victim may make an impact statement to the Probation Officer. The Probation Officer then makes a recommendation to the judge about the type and severity of the sentence (penalties). The judge may follow the recommended sentence from probation or change it.

7) Sentencing: The penalties for the defendant will be announced in District Court after the trial and the pre-sentence investigation is completed. The sentence may include fines and/or jail or prison time or probation.

8) Appeal: If the defendant is found guilty, he/she has a right to appeal the conviction to a higher court. During this time, the defendant may be free on an appeal bond.
(See Appeal Process Information Section)

B) Pleads Guilty or No Contest: The defendant pleads guilty or No Contest (Nolo Contendere) to the charges that were brought to the District Court. Before deciding on the sentencing, the judge may order a pre-sentence investigation.

1) Pre sentencing Investigation: If the defendant pleads guilty or no contest, a pre-sentence investigation may be ordered by the judge. A pre-sentence investigation is conducted by the Probation Department. It consists of an interview with the defendant, a review of his/her criminal record, and a review of the specific facts of the crime. A victim may make an impact statement to the Probation Officer. The Probation Officer then makes a recommendation to the judge about the type and severity of the sentence. The judge may follow the recommended sentence from probation or change it.

2) Sentencing: The penalties for the defendant will be announced in District Court after the pre-sentence investigation is presented. The sentence may include fines and/or jail or prison time or probation.

3) Appeal: The defendant has a right to appeal the sentence to a higher court. During this time, the defendant may be free on an appeal bond. (See Appeal Process Information Section)

Appeal Process Information

An appeal is usually based on some error in the procedure or application of the law. During this time the defendant may be released on an appeal bond until the appeal is heard in the higher court, which could be several years later. The trial court's decision is not considered final until all appeals are heard. Once the appeal is heard, the decision will be made to

uphold the decision of the lower court or dismiss the decision of the lower court.

Appeals are first taken to the Court of Appeals and once a decision is made by the Court of Appeals, the defendant can then appeal to the State Supreme Court.

Victims' Rights

Listed below are the basic rights for victims of crime. If more information is needed, please contact the prosecutor in the County Attorney's office handling the case or a victim assistance program .

Victims Of Crime Shall Have the following rights:

1. To examine information which is a matter of public record
2. To be notified by the County Attorney:
 - of the crimes for which the defendant is charged, the defendant's bond, and the time and place of any scheduled court proceedings;
 - of the actual time and place of the sentencing proceeding;
 - of the final disposition of the case;
 - of the time and place of any further judicial proceedings if the defendant was acquitted on grounds of insanity;
 - of the crimes for which the defendant was convicted;
 - of the victim's right to make a written or oral impact statement for the probation pre-sentence investigation report concerning the defendant;
 - of the address and telephone number of the probation office which is to prepare the pre-sentence investigation report;
 - if the pre-sentence investigation report and any statement by the victim included in such report is to be made available to the and;
 - of their right to submit a written impact statement at the sentencing proceeding or to read his or her impact statement at the sentencing proceeding;
3. To be present throughout the entire trial of the defendant, unless the victim is to be called as a witness

4. The victim will be notified:
 - of the tentative date of release and the earliest parole eligibility date of the offender. The notification will be made within 90 days of conviction of the offender.
 - of any parole hearing dates for the offender; their right to testify before the Board of Parole or submit a written statement for consideration by the Parole Board;
 - of the decision of and any action taken by the Parole Board;
 - of a any cancelled court proceeding for which the victim received a subpoena to appear
5. To submit a written statement for consideration at any conditional release (a furlough from incarceration for 24 hours or longer) proceedings, Board of Parole proceedings, pardon proceedings, or commutation proceedings
6. The victim will be informed of:
 - all writs (written orders) or subpoena (written request to appear in court and testify) or notices to appear that they are entitled to apply for and may receive a witness fee;
 - financial assistance, fees and other social services to which they may be entitled as a result of being a witness or a victim of a crime, and;
 - to be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled;
7. To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts
8. During court proceedings, to be provided, whenever possible, a secure area that is not in close proximity to the defendant and the defendant's family and friends;
9. To have any stolen or other personal property returned by law enforcement when it is no longer needed as evidence
10. To be provided help in working with the victim's employer to minimize an employee's loss of pay and other benefits resulting from the victim's court appearances;
11. To a speedy disposition of the case in which they are involved
12. To be informed by the county attorney of the final disposition of a felony case in which they were involved and to be notified whenever the defendant is released from custody;
13. To have the family members of all homicide victims afforded all of the rights of this act;

14. To receive a pamphlet from the County Attorney no later than 72 hours after arraignment of the defendant that briefly explains the criminal justice system and provides information about the rights of victims;
15. To be notified of the filing of an appeal by the defendant;
16. To be notified by the Attorney General:
 - that the defendant has filed an appeal of the conviction;
 - about the appeal process, including possible dispositions;
 - if the defendant has been released on bail pending the disposition of the appeal;
 - of the time and place of any appeal proceedings and any changes in the time or place of those proceedings;
 - of the results of the appeal;
 - of the final disposition of the case within 30 days after the final disposition is made;
17. In the event the defendant's conviction is reversed and the case is sent back to the trial court for further proceedings, the victim has the same rights he or she had during the previous proceedings which led to the appeal;
18. To be immediately notified of the escape of the prisoner;
19. To be notified if the prisoner is confined pursuant to a sentence;
20. To waive their rights as a victim at any time;
21. To request the County Attorney to forward their name and address to the appropriate agency so that they can be notified by:

1) the Department of Correctional Services or county corrections agency:

- if the convicted person is granted a furlough or release from incarceration for 24 hours or longer or transferred to community status;
- if a convicted person is released into a community-based program, including educational release and work release programs.
- if a convicted person escapes or does not return from a granted furlough or release and be notified when the convicted person is returned into custody;
- if a convicted person is discharged from custody upon completion of his or her sentence.
- of the earliest date the convicted person can be paroled or released;

- of any reduction in the convicted persons minimum sentence;

2) the Board of Parole:

- of the tentative release date and the earliest parole eligibility date of the convicted person
- of any parole hearings or proceedings;
- when a convicted person who is on parole is returned to custody because of parole violations;
- if it has been decided that the convicted person is a mentally disordered sex offender or is a convicted sex offender after the convicted person is released from custody or treatment

3) the Department of Health and Human Services:

- when the convicted person becomes the subject of a mental health petition prior to their discharge from custody or within thirty days after such discharge
- when a person under the mental health board commitment escapes from an inpatient facility providing treatment and again when the person is returned to an inpatient facility;
- when a person under a mental health commitment is discharged or has a change in disposition
- when a person under a mental health commitment is granted a furlough or release for 24 hours or longer;
- when a person under a mental health commitment is released into educational programs or work release programs. Such notification shall occur at the beginning and termination of any such programs.

4) the Board of Pardons:

- of any pardon or commutation proceedings;
- if a pardon or commutation of the conviction has been granted;

Other Help Available

Crime Victim's Reparations Program

You may be eligible for financial help with bills relating to your crime. If you have medical expenses, funeral expenses or have lost wages as a result of a crime, and if these are not covered by insurance, you may be eligible for reimbursement under the Nebraska Crime Victims Reparation Act. To be eligible you must report the crime to law enforcement within 72 hours and apply for compensation within 2 years from the date of the crime. The compensation program does not cover loss of property or pain and suffering.

For more information and a claim form contact your local Victim Assistance Program, Domestic Violence Program, state or local MADD program or contact the Nebraska Crime Commission at P.O. Box 94946, Lincoln, Nebraska 68509; or call (402) 471-2828.

Protection Order

A Protection Order is an order from a judge to help protect people from abuse or harassment. It is granted because someone attempted or threatened to cause bodily injury, or intimidated the other person by physical threats.

There are two types of Protection Orders, a Domestic Abuse Protection Order and a Harassment Protection Order. A Domestic Abuse Protection Order is for people who have been in close relationships (relatives, spouses or former spouses, people who have lived or are living together). A Harassment Protection Order does not depend upon relationships, but requires a number of telephone or personal contacts that seriously terrify, threaten, or intimidate a person.

You must complete Protection Order forms and give them to the district court clerk who then gives the forms to the judge. You can get the Protection Order forms from the district court clerk or contact a victim assistance agency for help or go online at www.nebraskacourt.com/rules/forms/

VINE

VINE (Victim Information & Notification Everyday) is a free anonymous computer service that provides victims of crime the ability to check on the status of a specific offender and/or be notified if the offender is released from prison or jail or transferred to another correctional facility. The Nebraska VINE service is available in English and Spanish.

For inmate status information or to be notified when an inmate is released or transferred, call, toll-free, 1-877 NE-4-VINE (1-877-634-8463) and follow the prompts. You may also request help from a victim assistance agency.

When checking on the status of an inmate, you will be asked to enter the name of the offender or his/her inmate number. VINE will quickly provide the caller with inmate status information.

If you want to be notified when the offender is released or transferred to another facility you must register by calling the number listed above. During registration you will be asked to provide a telephone number where you can be reached and to select a four digit Personal Identification Number (PIN) code. When the VINE system calls you and there is no answer or the line is busy, VINE will continue to call for a minimum of 24 hours. VINE will leave a message on an answering machine, but will continue to call for 24 hours or until you enter your PIN. Entering your PIN notifies the VINE system that you have received the notice.

Glossary

Arraigned To be called before a court to answer to the charges filed

Bail An amount of money set by the court which allows a person charged with a crime to be released from jail. The purpose of bail is to insure the defendant (person charged with a crime) will appear in court. The defendant usually must pay 10% of the amount of bail set by the judge.

Complaint A written document presented to the court charging a defendant with the offense.

Continuances Sometimes court hearings cannot always take place as scheduled. As a witness you may be informed that your case had been continued or will be heard on another day.

County Attorney A lawyer employed by the county whose job is to prosecute people who are accused of committing crimes.

Crime Victim Reparations Fund A program to assist innocent victims of crime who suffer bodily harm and have incurred a financial loss as direct result of a criminal act.

Crime Victim's Bill of Rights A portion of the state constitution that guarantees certain rights to crime victims which are listed in this pamphlet.

Defendant A person who is charged with committing a crime.

Felony A serious crime that is usually punishable by time in a state penitentiary or by time spent on probation and/or a fine.

Furlough A privilege of limited freedom from prison of 12 to 48 hours. Furloughs are approved by the Department Director and the Board of Parole. Inmates who are on furlough are escorted by approved sponsors who are required to accompany the inmate at all times.

Jury Twelve county residents sworn to decide if the defendant is guilty or not guilty of the crime or crimes they are charged with.

Misdemeanor A lesser offense for which a maximum sentence of one year or less in jail, probation, and/or a fine can be imposed. There is no preliminary hearing held for misdemeanor crimes.

No Contest (Nolo Contendere) A plea by the defendant in a criminal prosecution that, without admitting guilt, subjects him or her to a conviction but does not prevent him or her from denying the charges in a future court proceeding.

Parole The supervised release of an inmate after he/she has served a portion of his/her sentence in prison. An inmate's parole release is subject to the conditions set by the Nebraska Board of Parole. Violation of these conditions can result in the arrest and return of the inmate (parolee) to prison.

Parole Board (Board of Parole) A five-member board (separate from the Nebraska Department of Correctional Services) that makes decisions about whether to approve, deny or revoke paroles.

Perjury Deliberate false testimony under oath.

Pre –Sentence Investigation A witness report prepared by a probation officer which provides background information about the defendant, the crime and its impact on the victim. The judge uses this information in sentencing the defendant.

Protection Order An order from a judge designed to attempt to make an individual do something or stop doing something. These orders are an attempt to help protect victims from future acts of family violence.

Public Defender Lawyer employed by the local government to represent defendants who cannot afford to pay for a lawyer's services.

Restitution Payment by offenders to the victim for damage that happened during a crime. Restitution helps to make the offender accountable for the crime and helps restore the victim's financial loss.

Subpoena A court order directing you to be present at a certain time and at a certain place. Failure to comply with the subpoena will cause you to be in contempt of court.

Victim A person who, as a result of a homicide, a first or second degree sexual assault, a first or second degree assault, a sexual assault of a child, a first degree false imprisonment, or a robbery, has had a personal confrontation with the offender. Victim shall also mean a person who suffered serious bodily injury as a result of a motor vehicle accident when the violator was charged with driving under the influence.

Victim Impact Statement A written form that a victim may use to explain to a Probation Officer and a judge how the crime has affected you emotionally, physically and financially. Prosecutors provide these forms to victims of violent crimes. The prosecutor gives the completed form to the judge before the defendant is sentenced.

Waive (Victim Rights) To voluntarily give up or to temporarily postpone your rights as a victim of a crime.

Work Release A program that allows an inmate who is confined in prison to be released each day to go to work in the community.